In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 204

PEARL BEER DISTRIBUTING COMPANY OF JEFFERSON COUNTY, INCORPORATED, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. 39-40) is reported at 331 F. 2d 301. The Board's decision and order (Pet. 11-38) are reported at 143 NLRB No. 65.

JURISDICTION

The court of appeals' decision (Pet. 39-40) was entered on April 20, 1964, and its decree (Pet. 63-64)

was entered on May 1, 1964. The petition for a writ of certiorari was filed on June 22, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTION PRESENTED

Whether the Board, having found that the Company's operations affect commerce within the meaning of the National Labor Relations Act, may properly assert jurisdiction over certain of its employees without a specific showing that these particular employees were themselves engaged in work affecting commerce.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*), are set forth in the petition (Pet. 41-43).

STATEMENT

Petitioner, a Texas corporation with its principal office and warehouse in Beaumont, Texas, operates a beer wholesaling distributorship; it is a member of a multi-employer bargaining group which bargains with an independent union concerning driver-salesmen (Pet. 12-13; R. 38-39, 44).[1] During the 12-month period ending November 27, 1962, petitioner sold and distributed products the gross value of which exceeded

[1] "R." and "J.A." refer to the printed record and joint appendix filed in the court below.

$500,000. During the same period, one or more members of the multi-employer bargaining group purchased over $50,000 worth of beer which was shipped from points outside the State of Texas directly to this member or members (*ibid.*).

In the summer of 1962, the Union[2] commenced an organizing campaign among petitioner's warehouse employees, who were previously unrepresented and had not been included in the prior multi-employer bargaining (Pet. 14-15; J.A. 74). Petitioner sought to defeat the campaign by threatening the employees with reprisals and by discriminating against union adherents (Pet. 14-30). The Board asserted jurisdiction over petitioner on the ground that, although its operations alone did not appear to meet the Board's jurisdictional standards, it was a member of a multi-employer bargaining group and the operations of the group satisfied those standards (Pet. 13-14). The Board went on to find that petitioner's conduct was violative of Sections 8(a)(1) and (3) of the Act, and to enter an appropriate remedial order (Pet. 37-38, 31-32).[3]

The court of appeals, in a *per curiam* opinion, sustained the Board's finding and enforced its order in full (Pet. 39-40).

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[2] Beer Drivers Local 253, AFL-CIO, International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, AFL-CIO.

[3] The petition is directed solely to the jurisdictional issue and does not attack the propriety of the Board's substantive unfair labor practice findings.

ARGUMENT

Since the decision of the court of appeals is correct, and there is no conflict of decisions, there is no occasion for further review.

Under the Board's discretionary jurisdictional standards, jurisdiction is asserted over a wholesale concern if it has a yearly inflow or outflow of goods or services across state lines of over $50,000 (Pet. 44). *Siemons Mailing Service*, 122 NLRB 81. There is no question that this constitutes a sufficient impact on commerce to bring the business under the Board's legal jurisdiction. Cf. *National Labor Relations Board v. Reliance Fuel Oil Corp.*, 371 U.S. 224. For the purposes of the Board's discretionary standard, a number of concerns which have joined together in a multi-employer bargaining association are considered as a single employer; jurisdiction will be asserted over the entire group if the operations of any one member or those of the group combined are sufficient to meet the standard. *Siemons Mailing Service*, *supra*, 122 NLRB at 84. See also *Belleville Employing Printers*, 122 NLRB 350, 352; *Westside Market Owners Association*, 126 NLRB 167, 169-170. The courts have agreed with the Board that the impact on commerce of concerns which have thus integrated their labor relations may properly be measured by the "totality of the operations." *National Labor Relations Board* v. *Gottfried Baking Co.*, 210 F. 2d 772, 777-778 (C.A. 2); *National Labor Relations Board* v. *Sightseeing Guides and Lecturers Union*, 310 F. 2d

40, 42 (C.A. 2); *National Labor Relations Board* v. *Miscellaneous Drivers and Helpers Local 610*, 293 F. 2d 437, 439-440 (C.A. 8).

While petitioner's operations taken alone do not appear to be sufficient to meet the Board's jurisdictional standard, it is a member of a multi-employer group, and it is undisputed that one or more members of the group received shipments valued at over $50,000 direct from out-of-state. This is sufficient to establish the Board's jurisdiction, both as a matter of law and as a matter of discretion, over the entire multi-employer group, including petitioner.

Petitioner does not appear to contest the validity of this conclusion insofar as its driver-salesmen, who were included in the multi-employer unit, are concerned. Its sole contention (Pet. 7-9) is that, while it may be proper to consider petitioner's participation in the multi-employer group for purposes of determining whether to assert jurisdiction over issues involving its driver-salesmen, it is not proper to do so with respect to its warehouse employees. Petitioner reasons that the driver-salesmen but not the warehouse employees engage in work affecting commerce. It is settled, however, that the effect on interstate commerce of the employer's entire business, and not the effect of any single group of his employees, is determinative of the Board's jurisdiction under the Act. See *National Labor Relations Board* v. *Reliance Fuel Oil Corp.*, 371 U.S. 224; *Virginia Electric and Power Co.* v. *National Labor Relations Board*, 115 F. 2d 414, 415-416 (C.A. 4), affirmed on this issue, 314 U.S. 469, 475; *National Labor Relations Board* v.

Tri-State Casualty Insurance Co., 188 F. 2d 50, 52 (C.A. 10); *National Labor Relations Board* v. *Sightseeing Guides, supra*, 310 F. 2d at 42. See also *Virginia Railway Co.* v. *System Federation No. 40*, 300 U.S. 515, 553-555. By the same reasoning, the Board has jurisdiction over employees who although not themselves engaged in work affecting commerce, are employed by an employer who because of his membership in a multi-employer group, is subject to the Act.

CONCLUSION

For the foregoing reasons, we respectfully submit that the petition for a writ of certiorari should be denied.

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JULY 1964.

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